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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,097	07/14/2003	John Irving	28849/09214	5804
27530 7590 02/18/2009 NELSON MULLINS RILEY & SCARBOROUGH, LLP 1320 MAIN STREET, 17TH FLOOR COLUMBIA, SC 29201				
EXAMINER				
VIG, NARESH				
ART UNIT		PAPER NUMBER		
3629				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,097

Applicant(s)

IRVING ET AL.

Examiner

NARESH VIG

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

This is in reference to communication received 13 November 2008. Cancellation of claim 1 and addition of claims 2 - 15 is acknowledged. Claims 2 – 15 are pending for examination.

Response to Arguments

Applicant's arguments and concerns are for newly added claims which have been responded to in response to the pending claims.

Double Patenting

Claims 2 – 3 and 5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 – 4 of copending Application No. 10/619,099. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant application and the copending application both claim the same invention of defining a plurality of levels, establishing a hierarchy for the plurality of levels, and creating a user account associated with the at least one of the plurality of levels.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2 – 5 are not patentable because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent¹ and recent Federal Circuit decisions, A "process" under § 101 must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing or (3) the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility, furthermore, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity². If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to nonstatutory subject matter. Moreover, the recitation of "computer implemented" in the preamble with the absence of a computer in the body of the claim or a lack of "another statutory class" in the body of the claim does not make the claim statutory.

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)

² The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972), *In re Bilski*, Fed. Cir. 2007-1130

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker US Publication 2003/0207245 in view of Shannon US Patent 6,233,618.

Regarding claim 2, Parker teaches system and method of providing online distance learning. Parker teaches capability of data transmission in a multi-level system for a plurality of users (Staff, Professors, TA's, End Users) [Parker, Fig. 1 and disclosure associated with the Figure]. Parker does not explicitly teach filtering and monitoring of data transmission. However, Shannon teaches system and method for filtering and monitoring of data transmission [Shannon, Fig. 2 and disclosure associated with the Figure].

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify Parker by adopting teachings of Shannon to provide access control not primarily upon content, but rather, based upon the requests made by whom, at what times [Shanon, col. 4, lines 26 – 30]; apply a known technique to a known device (method, or product) ready for improvement to yield predictable results; and also, known work in one field of endeavor may prompt variations of it for use in either the

same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art.

Parker in view of Shannon teaches capability for:

filtering and monitoring of data transmission in a multi-level system for a plurality of users

defining a plurality of levels of the system, wherein at least one level comprises filtering and monitoring (user will always be associated with his or her respective group) [Shanon, col. 4, lines 26 – 30, Col. 7, Lines 32 – 34];

establishing a hierarchy for the plurality of levels (as explained earlier, parker teaches plurality of types of users). **It is old and known to one of ordinary skill in the art that professors have higher authority than TA's who have higher authority than end users**, and, Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify assign different level to different type of users such that the user with lower authority will have access to subset of the user with the higher authority, apply a known technique to a known device (method, or product) ready for improvement to yield predictable results;wherein the hierarchy defines levels that are above other levels and levels that are below other levels, and therefore, inherits any filtering and monitoring of levels above

creating a user account associated with the at least one of the plurality of levels, wherein the user account controls filtering and monitoring applied to other user accounts associated with levels below the at least one of the plurality of levels **(implementing group level access technology to manage system access is old**

and known to one of ordinary skill in the art).

Regarding claim 3, Parker in view of Shannon teaches capability wherein the user account associated with the at least one of the plurality of levels is able to designate the filtering and monitoring control of the user account to at least one of the other user accounts associated with levels below the at least one of the plurality of levels **(old and known to one of ordinary skill in the art that a person/operator with administrative control is able to configure access limitations of the users who have lower authority).**

Regarding claim 4, Parker in view of Shannon teaches capability wherein the designated filtering and monitoring control can be implemented such that it is less than the filtering and monitoring control of the user account associated with the at least one of the plurality of levels.

Regarding claim 5, as responded to earlier, Parker in view of Shannon teaches capability wherein the at least one of the other user accounts to which the filtering and monitoring control of the user account has been designated is able to designate as much of the filtering and monitoring control that has been designated to the at least one of the other user accounts to another of the other user accounts associated with levels at or below the level associated with the at least one of the other user accounts.

Regarding claim 6, Parker in view of Shannon teaches capability wherein the filtering and monitoring can be for outgoing data transmissions.

Regarding claim 7, Parker in view of Shannon teaches capability wherein the filtering and monitoring can be for incoming data transmissions.

Regarding claim 8, Parker in view of Shannon teaches capability wherein the filtering and monitoring can be for electronic mail.

Regarding claim 9, Parker in view of Shannon teaches capability wherein the filtering and monitoring can be for attachments to electronic mail.

Regarding claim 10, Parker in view of Shannon teaches capability wherein the filtering and monitoring can be for incoming and outgoing data transmissions.

Regarding claim 11, Parker in view of Shannon teaches capability wherein the filtering and monitoring can be based on a plurality of keywords in a master flagged list.

Regarding claim 12, Parker in view of Shannon teaches capability wherein the filtering and monitoring routes a data transmission that can includes one of the plurality of keywords to an administrator.

Regarding claim 13, Parker in view of Shannon teaches capability wherein the filtering and monitoring routes to an administrator a data transmission that can include a subset of the plurality of keywords only when the subset of keywords appears in the data transmission in a predefined sequence.

Regarding claim 14, Parker in view of Shannon teaches capability wherein the user account associated with the at least one of the plurality of levels can be able to modify the master flagged list.

Regarding claim 15, as responded to earlier, Parker in view of Shannon teaches capability wherein the user account associated with the at least one of the plurality of levels is able to designate the filtering and monitoring control of the user account to at least one of the other user accounts associated with levels below the at least one of the plurality of levels so that the at least one of the other user accounts is able to customize the master flagged list.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

1. Norwood et al. US Publication 2002/0100808
2. Yang et al. US Patent 6,470,353
3. Frasson et al. US Patent 6,341,960
4. Cirasole et al. US Patent 5,987,606
5. Sonnenreich et al. US Patent 5,974,446
6. Schneck et al. US Patent 5,933,498

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 17, 2009

/Naresh Vig/
Primary Examiner, Art Unit 3629